

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA	)	
	)	
	)	NO. 05-CR-10102 JLT
	)	
v.	)	
	)	
JOHN BRUENS, MARY STEWART,	)	
MELISSA VAUGHN, and	)	
MARC SIROCKMAN	)	
	)	
Defendants.	)	
	)	

**DEFENDANTS' MOTION FOR ADDITIONAL PEREMPTORY CHALLENGES**

Defendants John Bruens, Mary Stewart, Melissa Vaughn, and Marc Sirockman (the “Defendants”) hereby respectfully request additional peremptory challenges to supplement those provided by Rule 24(b) of the Federal Rules of Criminal Procedure. Due to both the number of defendants and the sensitive nature of the disease that is the focus of the relevant medication in this case (AIDS), such additional challenges are necessary to streamline the jury selection process and to preserve Defendants’ right to be judged by an unbiased jury of their peers. Specifically, the Defendants request that the court grant each of them 5 peremptory challenges, which would be a total of 20 challenges for 4 defendants, plus a total of 4 additional challenges for the alternate jurors.

**ARGUMENT**

Federal Rule of Criminal Procedure 24(b) provides that “[t]he Court may allow additional peremptory challenges to multiple defendants, and allow the additional defendants to exercise those challenges separately or jointly.” In a multiple defendant case, the Court has discretion to

grant additional peremptory challenges to defendants pursuant to Rule 24(b)(2) and has regularly exercised that discretion. See United States v. Marrero-Ortiz, 160 F.3d 768, 776 (1st Cir. 1998) (“... the applicable rule allows a judge to grant additional challenges [and] the judge has wide discretion in administering this authority”); see also United States v. Maldonado-Rivera, 922 F.2d 934, 971 (2<sup>nd</sup> Cir. 1990) (five defendants awarded total of 15 challenges plus five additional challenges for alternates); United States v. Blanton, 719 F.2d 815, 828 (6<sup>th</sup> Cir. 1983) (three defendants awarded total of 30 challenges); Untied States v. Preston, 1999 WL 254379, \*24 (D.Kan. 1996) (four defendants awarded 12 challenges); United States v. Rochon, 1985 WL 2858, \*5 (N.D. Ill. 1985) (court’s practice is to award more than 10 challenges in multi-defendant cases, but less than 10 times the number of defendants).

Granting additional peremptory challenges to the Defendants provides an important safeguard of a fair trial in multiple defendant cases. Conversely, a failure to award additional peremptory challenges can impede the jury selection process, as defendants find themselves unable to agree on an overly restrictive number of challenges. See United states v. Harris, 542 F.2d 1283, 1284 (7<sup>th</sup> Cir. 1976) (additional peremptories added during jury selection after defendants could not agree on challenges). In this case, there are multiple defendants and the Court would be well within its discretion to grant the requested additional peremptory challenges to Defendants both to ensure a fair trial and impartial jury and to simplify the jury selection process.

### **CONCLUSION**

WHEREFORE, Defendants respectfully submit that they should be granted the additional peremptory challenges described herein pursuant to Rule 24(b) of the Federal Rules of Criminal Procedure.

Respectfully submitted,

**JOHN BRUENS, MARY STEWART,  
MELISSA VAUGHN, and MARC SIROCKMAN,**

By their undersigned attorneys.

/s/ McKenzie E. Webster  
Tracy A. Miner  
McKenzie E. Webster  
Counsel for Marc Sirockman

/s/ Thomas McC. Souther  
Thomas McC. Souther  
Counsel for John Bruens

/s/ Mark A. Berman  
Mark A. Berman  
Counsel for Mary Stewart

/s/Adam S. Hoffinger  
Adam S. Hoffinger  
Counsel for Melissa Vaughn

**Dated:** April 6, 2007

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing motion was filed electronically in compliance with ECF procedures on this 6th day of April 2007.

/s/ McKenzie E. Webster